

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO AGUILAR-LOPEZ,

Defendant.

No. CR-09-6045-FVS
CR-10-6018-FVS

ORDER REGARDING MOTIONS TO
WITHDRAW GUILTY PLEAS

THIS MATTER came before the Court on May 24, 2011, for a hearing defendant's motions to withdraw his guilty pleas in Cause Nos. CR-045-FVS and CR-10-6018-FVS. The Government was represented by S. A. Goeke. Defendant was present and represented by James Egan.

DISCUSSION

I. CR-09-6045-FVS

On July 23, 2010, Defendant agreed to plead guilty to the Indictment charging Defendant with Alien in United States After Deportation in violation of 8 U.S.C. § 1326. (Ct. Rec. 55). Defendant moved to withdraw this plea, and the Government objects indicating that Defendant has failed to articulate a fair and just reason to withdraw his 10-month-old guilty plea (Ct. Rec. 86).

Federal Rule of Criminal Procedure 11(d)(2)(B) provides that a district court may permit a defendant to withdraw a plea of guilty prior to the imposition of a sentence if he "can show a fair and just reason for requesting the withdrawal." It is well established that a defendant has no right to withdraw his guilty plea, and that a

1 withdrawal motion is committed to the sound discretion of the
2 district court. *United States v. Signori*, 844 F.2d 635, 737 (9th
3 Cir. 1988). It is the defendant who bears the burden of establishing
4 a "fair and just reason." *United States v. Castello*, 724 F.2d 813,
5 814 (9th Cir. 1984).

6 The Ninth Circuit has recognized that "while the defendant is
7 not permitted to withdraw his guilty plea 'simply on a lark,' the
8 'fair and just' standard is generous and must be applied liberally."
9 *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008)
10 (internal citations omitted). Prior to sentencing, the proper
11 inquiry is whether the defendant has shown a fair and just reason for
12 withdrawing his plea even if the plea is otherwise valid. *United*
13 *States v. Davis*, 428 F.3d 802, 806 (9th Cir. 2005). In this circuit,
14 fair and just reasons for withdrawal may include "inadequate Rule 11
15 plea colloquies, newly discovered evidence, intervening
16 circumstances, or any other reason for withdrawing the plea that did
17 not exist when the defendant entered his plea." *Id.* at 805. Each
18 case must be reviewed in the context in which the motion to withdraw
19 arose to determine whether a fair and just reason exists. *McTiernan*,
20 546 F.3d at 1167.

21 Defendant claims that the failure to have an immigration judge
22 tell him that he was not allowed to reenter the United States is a
23 fair and just reason for him to withdraw his guilty plea. (Ct. Rec.
24 80). Former defense counsel indicated that additional bases for
25 withdrawal of the plea included: (1) Defendant had not been formally
26 deported in the past, (2) he wants to go to trial on the matter, (3)

1 he has seen several cases where the charges are dismissed because
2 they were not deported by an immigration judge, and (4) his prior
3 attorney made statements that Defendant had seen a judge in the
4 deportation proceedings, but Defendant had not seen a judge prior to
5 his deportation. (Ct. Rec. 70-1). While Defendant now asserts that
6 he was not seen by an immigration judge and advised he was not
7 allowed to reenter the United States prior to his deportation, the
8 issue of the validity of Defendant's deportation was raised by prior
9 counsel in a motion to dismiss, and Defendant's signed declaration
10 contradicts this assertion. Defendant's declaration states that he
11 "appeared before an Immigration Judge in Las Vegas" and was informed
12 that because "I had been convicted of drugs I would be removed."
13 (CR-09-6045-FVS; Ct. Rec. 51 ¶¶ 4-5).

14 Nothing has changed since Defendant entered his plea several
15 months ago. There has been no newly discovered evidence or
16 intervening change in the law or circumstances that would justify
17 withdrawal of the guilty plea in this case. It is clear from the
18 submissions that Defendant has simply changed his mind and now wishes
19 to go to trial. This does not constitute a "fair and just" reason to
20 allow him to withdraw his plea. Defendant's motion to withdraw his
21 plea of guilty in Cause No. CR-09-6045-FVS is DENIED.

22 **II. CR-10-6018-FVS**

23 On March 1, 2011, pursuant to a Rule 11(c)(1)(C) Plea Agreement,
24 Defendant pleaded guilty to the Information Superseding Indictment,
25 charging Defendant with Manufacture of a Controlled Substance (100 or
26 more Marijuana plants) and Aiding and Abetting in violation of 21

1 U.S.C. § 841 and 18 U.S.C. § 2. The Government and Defendant agreed
2 that Defendant should be sentenced to a total term of 120 months
3 imprisonment and that the sentence run concurrent to any sentence
4 imposed in Cause No. CR-09-6045-FVS. (Ct. Rec. 114 ¶ 12).

5 Defendant moved to withdraw his plea in this case as well. The
6 Government responded that the plea agreement in this matter "reflects
7 an extremely generous resolution of the charges against the Defendant
8 . . . that allowed the Defendant to evade the otherwise applicable
9 mandatory minimum term of incarceration of 240 months that he faces
10 if convicted at trial of the charges alleged in the Indictment
11 returned by the Grand Jury." (Ct. Rec. 135). The Government does
12 not oppose Defendant's motion to withdraw his guilty plea and asks
13 that it be allowed to dismiss the Information Superseding Indictment
14 (Ct. Rec. 111) in favor of the Indictment returned by the Grand Jury,
15 which would again expose Defendant to a mandatory minimum sentence of
16 240 months, as opposed to the 120 months negotiated in the Rule
17 11(c)(1)(C) plea agreement.

18 At the May 24, 2011, hearing, Defendant's counsel advised the
19 Court that he had explained to his client the potential consequences
20 of withdrawing his guilty plea in this case. Defendant acknowledged
21 he understood the consequences and still wished to withdraw his plea
22 and proceed to trial.

23 Based on a lack of opposition from the Government, Defendant's
24 motion to withdraw his guilty plea in Cause No. CR-10-6018-FVS is
25 GRANTED. The Government will be allowed to dismiss the Information
26 Superseding Indictment in favor of the Indictment.

The Court, being fully advised, now therefore, **IT IS HEREBY**
ORDERED:

1. Defendant's requests to withdraw his guilty plea in Cause No. CR-09-6045-FVS (Ct. Rec. 69, 70 & 79) are DENIED

2. Defendant's requests to withdraw his guilty plea in Cause No. CR-10-6018-FVS (Ct. Rec. 118, 119 & 123) are GRANTED.

3. The Order Accepting Guilty Plea in Cause No. CR-10-6018-FVS (Ct. Rec. 116) is VACATED. The Information Superseding Indictment filed on March 1, 2011 (Ct. Rec. 111) is dismissed, and the matter shall proceed against Defendant on the Superseding Indictment filed on July 14, 2010 (Ct. Rec. 32).

4. A pretrial conference in Cause No. CR-10-6018-FVS is scheduled for **July 21, 2011 at 10:30 a.m. in Yakima, Washington.**

5. Trial in Cause No. CR-10-6018-FVS is scheduled for **August 1, 2011 at 9:00 a.m. in Richland, Washington.**

6. All pretrial motions are due June 30, 2011. All responses are due by July 7, 2011. All replies are due by July 14, 2011.

7. The sentencing hearing in Cause No. CR-09-6045-FVS shall be scheduled following the final disposition of Cause No. CR-10-6018-FVS.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this Order and furnish copies to counsel.

DATED this 26th day of May, 2011.

S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge